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RECORDATION NO. _____ FILED & RECORDED

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1974

between

THE COLORADO AND SOUTHERN RAILWAY COMPANY,
as Lessee,

and

BURLINGTON NORTHERN INC.,
as Guarantor

and

**EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee under
a Trust Agreement dated as of February 1, 1974 with American
Road Equity Corporation,**
as Lessor

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1974, among THE COLORADO AND SOUTHERN RAILWAY COMPANY (hereinafter called the Lessee), BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Guarantor), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, as Trustee (hereinafter called the Lessor) under a Trust Agreement (hereinafter called the Trust Agreement) dated as of February 1, 1974 with AMERICAN ROAD EQUITY CORPORATION, a Delaware corporation (hereinafter called the Beneficiary).

WHEREAS, the Lessor and the Guarantor have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document) with GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor on or prior to February 22, 1974, the units of railroad equipment described in Schedule I hereto;

WHEREAS, the Lessee desires to lease all the units of railroad equipment described in Schedule I hereto, or such lesser number as are settled for under the Security Document (such units as are so settled for being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, the Guarantor desires to guarantee to the Lessor and the Vendor (such term being used herein to mean the Builder before any assignment of its interest in the Security Document and after any such assignment, such assignee (and its successors and assigns), which assignee is expected to be THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania banking corporation, as agent) the due and punctual payment of the sums payable by, and the due and punctual performance of all other obligations of, the Lessee under the Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions;

§1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Document. Upon such delivery, the Lessee will cause an inspector of the

Lessee or the Guarantor to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with §4 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease, unless such Unit shall not be settled for under the Security Document in which case such Unit shall be returned to the Lessor in the manner set forth in §13 hereof upon the exclusion of such Unit from the Security Document.

§2. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 30 consecutive semiannual payments payable on February 22 and August 22 in each year commencing, August 22, 1974, in an amount equal to the applicable basic lease rate therefor set forth in Schedule II hereto multiplied by the Purchase Price (as defined in the Security Document) of each Unit then subject to this Lease.

If any of the semiannual rental payment dates referred to above is not a business day (as defined in the Security Document) the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such payment shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first to apply such payments to satisfy the obligations of the Lessor under the Security Document known to the Vendor to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in clearing house funds in the city where such payment is to be made.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by

reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or under the Security Document, including the Guarantor's rights by subrogation thereunder, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§1, 6, 9, 12 and 16 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon the occurrence of an Event of Default hereunder or an event of default under the Security Document, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or the Guarantor is not so in default under the Security Document.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule I hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "The First Pennsylvania Banking and Trust Company, Agent—Security Owner, Leased from Exchange National Bank of Chicago, Trustee—Conditional Vendee" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title to and property in such Unit of the Lessor, the Vendor or any assignee of either and the rights of the Lessor under this Lease and of the Lessor and Vendor under the Security Document. The cost of such markings in the event of a change of the name of the Lessor shall be borne by the Lessor. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§5. *Taxes and Expenses.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of

any such taxes which would be payable to the state and city in which the Beneficiary has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Document, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Document, or the Beneficiary shall become obligated to make any payment to the Lessor in its individual capacity pursuant to any correlative provision of the Trust Agreement referred to in the first paragraph hereof, not covered by the foregoing paragraph of this §5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provisions.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor

and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Builder shall be required to refund the Purchase Price thereof pursuant to the third paragraph of Item 4 of Annex A to the Security Document (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such Casualty Occurrence or, in the event that such Casualty Occurrence occurs within 10 days prior to a rental payment date, at the option of the Lessee, either on such rental payment date or the tenth day following such Casualty Occurrence, the Lessee shall pay to the Lessor an amount equal to the rental payment in respect of such Unit due and payable on such rental payment date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue effective at the rental payment date next succeeding such Casualty Occurrence, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit shall, except as set forth in the next paragraph, be an amount equal to the product of (a) the Purchase Price of such Unit and (b) that percentage set forth in Schedule III hereto opposite the semiannual rental date next succeeding the date on which the Casualty Occurrence with respect to such Unit occurred.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in §13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to the product of (a) the Purchase Price of such Unit and (b) 15%. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss,

theft or complete destruction of such Unit), the Lessee shall be entitled to recover possession of such Unit.

Except as hereinabove in this §6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Document so long as the indebtedness, if any, evidenced by the Security Document shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any net insurance proceeds as the result of insurance carried by the Lessee, any condemnation payments or any payments by the Builder pursuant to the third paragraph of Item 4 of the Security Document received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §6. If the Lessor shall receive any such net insurance proceeds, condemnation payments or such payments by the Builder after the Lessee shall have made payments pursuant to this §6 without deduction for such net insurance proceeds, such condemnation payments or such payments by the Builder, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§7. *Reports.* On or before March 31 in each year, commencing with the calendar year 1975, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered

by such statement, the numbers and the markings required by §4 hereof and the Security Document have been preserved or replaced and (c) setting forth with respect to the Units as a whole, the percentage of time and mileage spent and travelled by such Units within and without the United States during such calendar year. The Lessor and the Beneficiary shall have the right to cause their agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Beneficiary may request during the continuance of this Lease.

The Lessee and the Guarantor also agree to furnish the Lessor and the Vendor (i) within 45 days after the end of each of the first three quarterly fiscal periods in each of the fiscal years of the Lessee and the Guarantor, consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each prepared by them as of the close of such periods, together with the related consolidated statements of income, surplus and source and application of funds for such periods, all in reasonable detail and certified by the respective Treasurers of the Lessee and the Guarantor, (ii) within 90 days after the close of each of the fiscal years of the Lessee and the Guarantor, consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each as of the close of such fiscal years, together with the related consolidated statements of income, surplus and source and application of funds for such fiscal years, all in reasonable detail and, in the case of the Lessee, certified by the Lessee's Treasurer and, in the case of the Guarantor, certified by a recognized national firm of independent public accountants, including their certificates and accompanying comments, (iii) within 45 days after the close of each of the fiscal years of the Lessee and the Guarantor, certificates of the Lessee and the Guarantor, signed by a principal financial officer of each, to the effect that the signers have reviewed the relevant terms of this Lease and the Security Document and have made, or caused to be made under their supervision, reviews of the transactions and condition of the Lessee and the Guarantor during the preceding fiscal year, and that such reviews have not disclosed the existence during such period, nor do the signers have knowledge of the existence as at the dates of such certificates, of any condition or event which constitutes an Event of Default or which, after notice or lapses of time or both, would constitute an Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee or the Guarantor has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the

filing of the same, the Railroad Annual Report Form R-1 (or any form substituted therefor) of the Lessor and the Guarantor and the annual report under the Securities Exchange Act of 1934 of the Guarantor, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee and the Guarantor also agree promptly to furnish the Lessor notice in writing of any matter which, in the opinion of either, might materially adversely affect the financial condition, affairs or operations of the Lessee or the Guarantor. The Lessee and the Guarantor also agree to furnish the Lessor from time to time on request such information as either they or the Lessor may be required to furnish to any person pursuant to the Security Document or the Trust Agreement.

§8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under Article 14 of the Security Document, *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee,**

and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in the same operating order, repair and condition as when originally delivered to the Lessee (or installed on such Unit), reasonable wear and tear excepted.


Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for

those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the equipment referred to in the first parenthetical clause of the preceding sentence from the Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in §13 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§9. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

7 NC  A. default shall be made in payment of any part of the rental provided for in §2, hereof or in payment of any part of the Casualty Value of any Unit provided for in §6 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or of the Guarantor herein or in the Security Document, and such default shall continue for 30 days after written notice from the Lessor to the Lessee and/or the Guarantor, as the case may be, specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and all the obligations of the Guarantor, as the case may be, under the Security Document and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as

obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. any other proceedings shall be commenced by or against the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Guarantor hereunder or under the Security Document under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Guarantor hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Guarantor or for the property of the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee and/or the Guarantor of the applicable covenants of this Lease or to recover damages for the breach thereof including net after tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee and the Guarantor shall remain liable as

hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee and the Guarantor any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee and the Guarantor (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a rate of 5% per annum, compounded semiannually, discounted from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor or the Beneficiary in respect of the receipt thereof under the laws of any federal, state or government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor or the Beneficiary, be equal to any portion of the 7% Job Development Tax Credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 of the Internal Revenue Code of 1954 as amended (herein called the Code), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary

as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as will cause the Lessor's or the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Lessor or the Beneficiary if it had been entitled to utilization of all of the maximum depreciation deductions based on a 12 year depreciable life for the Units authorized with respect to a Unit under Section 167 of the Code utilizing the "asset depreciation range" of 12 years for the Units prescribed in accordance with Section 167(m) of the Code (hereinafter called the Depreciation Deduction) and the deduction in each taxable year of the Lessor for all interest paid or accrued during such year on the Conditional Sale Indebtedness (as defined in the Security Document) computed in accordance with Section 163 of the Code (hereinafter called the Interest Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §16 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor or the Beneficiary for any interest or penalties incurred in connection with the Investment Credit, Depreciation Deduction or Interest Deduction which is lost, not claimed, not available for claim, disallowed or recaptured.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the events set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to §9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this §10 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner and at usual speed, cause such Units to be placed on such storage tracks of the Lessee or any of its affiliates as shall be designated by the Lessor,

(b) arrange for the Lessor to store such Units on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor, and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of

any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§5, 6, 8, 9, 16 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including any partner or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease and the Guarantor shall not be in default under this Lease or under the Security Document, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and the Guarantor shall not be in default under this Lease or under the Security Document, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon

connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this §11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of the United States of America, any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§12. *Renewal and Right of First Refusal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or such original term as once extended in the manner hereinafter set forth, as the case may be, elect to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for a period of two years commencing on the scheduled expiration of such original or once-extended term, as the case may be, of this Lease, at a rental payable in semi-annual payments in arrears, each in an amount equal to the "Fair Rental Value" of such Units, such semi-annual payments to be made on February 22 and August 22 in each year of the applicable extended term.

"Fair Rental Value" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or

before four months prior to the expiration of the term of this Lease or of the once-extended term hereof, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Provided that this Lease has not been earlier terminated or that the Lessee has not given notice to extend the term of this Lease as set forth above and the Lessee is not in default hereunder, the Lessor agrees that it will not sell such Units at the end of the original term of this Lease or the once-extended term hereof, or any of them, unless the Lessor shall have given the Lessee at least 30 business days prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. Such proposed sale must be to a party not affiliated with the Lessor, and the Lessor must so specify in its notice of sale to the Lessee. If the Lessee does not agree in writing to so purchase such Unit or Units within such 30 business day period, the Lessor may then sell such Unit or Units in accordance with the terms specified in such written notice.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the

request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee any of its affiliates, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit or arrange for the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this §13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to §6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence.

§14. *Opinions of Counsel.* On the Closing Date under the Security Document, the Lessee will deliver to the Lessor two counterparts of the written opinion of James W. Becker, Esq., counsel for the Lessee or such other counsel for the Lessee, who shall be satisfactory to the Lessor, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor and the Vendor, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into this Lease and any consent to any assignment hereof;

B. this Lease and any consent to any assignment hereof have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

D. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

E. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

On the Closing Date under the Security Document, the Guarantor will deliver to the Lessor two counterparts of the written opinion of James W. Becker, Esq., counsel for the Guarantor, or such other counsel for the Guarantor, who shall be satisfactory to the Lessor, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor and the Vendor, to the effect that:

A. the Guarantor is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Document and this Lease;

B. the Security Document and this Lease (and any consent to any assignment thereof or hereof) have been duly authorized, executed and delivered by the Guarantor and constitute valid, legal and binding agreements of the Guarantor, enforceable in accordance with their respective terms;

C. the Security Document (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease;

E. the entering into and performance of the Security Document or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Guarantor is a party or by which it may be bound.

§15. *Recording.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the

intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of the property, including (without limitation) an allowance for the Investment Credit, the Depreciation Deduction and the Interest Deduction (all as defined in Section 9 of this Lease), with respect to the Units to the extent so provided.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Units, and despite the incorporation of any used components therein, the Units will constitute "new eligible Section 38 property" within the meaning of Sections 46 and 48 of the Code, (ii) at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor and (iii) the Lessee will not at any time during the term of this Lease, use or fail to use any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

If (a) the Lessor or the Beneficiary shall lose, or shall not have or shall lose the right to claim, or if there shall be disallowed or recaptured with

respect to the Lessor or the Beneficiary, all or any portion of the Investment Credit, Interest Deduction or Depreciation Deduction as provided to an owner of property with respect to a Unit for any period prior to the termination of this Lease and full compliance by the Lessee with all of its obligations hereunder as the direct or indirect result of any act, representation, statement or failure to act of Lessee or any affiliate or any officer, employee, agent or attorney thereof or (b) the Lessor or the Beneficiary shall seek and shall not have obtained by December 31, 1974 a favorable ruling from the Internal Revenue Service with respect to the tax benefits specified in clause (a) above (including a ruling that this Lease is a lease for federal income tax purposes; that the trust created under the Trust Agreement will be treated for tax purposes as a grantor trust and not as an association taxable as a corporation; and that the Lessee is entitled to deduct its rental payments pursuant to Section 162 of the Code) (such failure to obtain such a ruling being hereby deemed to be an event causing the Lessor or the Beneficiary to lose or causing there to be disallowed or recaptured with respect to the Lessor or the Beneficiary the entire Investment Credit, the Interest Deduction and the Depreciation Deduction), then, in any such event, the Lessee shall promptly pay to the Lessor or the Beneficiary an amount which, after deduction of all taxes required to be paid by the Lessor or the Beneficiary in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall in the reasonable opinion of the Lessor or the Beneficiary, be equal to any portion of the Investment Credit lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary as a consequence of such event plus such sums as, will cause the Lessor's or the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Lessor or the Beneficiary if it had been entitled to utilization of all of the Interest Deduction or Depreciation Deduction which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary in consequence of such event plus such sum as will pay or reimburse the Lessor or the Beneficiary for any interest or penalties incurred in connection with the Investment Credit, Depreciation Deduction or Interest Deduction which is lost, not claimed, not available for claim, disallowed or recaptured; provided, however, that if the Lessee becomes obligated to pay any amount pursuant to clause (b) of this sentence, then, at the option of the Lessee, and in lieu of such amount, the Lessee or a designate of the Lessee, after written notice to the Lessor, may purchase on or prior to January 31, 1975 the interest of the Lessor in the Units and the

Security Document for an amount equal to the sum of (i) 40% of the Purchase Price of the Units, (ii) the Lessor's reasonable out-of-pocket expenses incurred in connection with the entering into of the transactions contemplated hereby (including, without limitation, the fees and disbursements of the Beneficiary's special counsel and the fee paid to NAC Leasing Corporation ("NACL") pursuant to the agreement between the Beneficiary, NACL and North American Car Corporation dated as of February 1, 1974) and (iii) interest on the amounts set forth in the preceding clauses (i) and (ii) at the rate of 12% per annum, compounded semiannually, from the date such amounts were paid or incurred by the Beneficiary and less (iv) any rental or casualty payment or portion thereof theretofore paid by the Lessee which has neither been applied by the Lessor to the payment of the Conditional Sale Indebtedness (as defined in the Security Document) or interest thereon nor is then owing with respect thereto, provided further, that such purchase option may be exercised by the Lessee only if the Guarantor unconditionally assumes all obligations of the Lessor under the Security Document, without giving effect to the limitations set forth in the last paragraph of Article 4 thereof and in Article 23 thereof. Neither the Lessor nor the Beneficiary shall be under any obligation to claim any tax benefit which is covered in any ruling request to the Internal Revenue Service with respect to which a favorable ruling is not obtained by December 31, 1974.

If any Unit shall be used in Canada or otherwise outside of the United States, the Lessee hereby agrees promptly to pay to the Lessor or to the Beneficiary an amount which, after deduction of all taxes required to be paid by the Lessor or the Beneficiary in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States or under the laws of any taxing authority or governmental subdivision of a foreign country, shall be equal to the excess of the foreign tax credit under Section 9.01 of the Code which would have been allowable to the Lessor or the Beneficiary with respect to such year and all prior years if the Lessor and the Beneficiary had not participated in the transactions contemplated by this Lease over the foreign tax credit actually allowable to the Lessor or the Beneficiary with respect to such years, together with any interest, penalties or additions to tax which may be assessed by the United States Government against the Lessor or the Beneficiary as a result of such loss of foreign tax credits. The good faith calculation by the Tax Department of Ford Motor Company of all amounts due under this paragraph shall be binding on the Lessee, the Lessor and the Beneficiary. In

connection therewith, the Beneficiary will provide the Lessee with a certificate of an officer of the Beneficiary setting forth in reasonable detail the figures and method used in making such calculation. Further, the Lessee hereby agrees that it will not have the right to inspect the tax returns or related documents of the Lessor, the Beneficiary or Ford Motor Company in order to confirm the calculations made by the Tax Department of Ford Motor Company pursuant to this paragraph.

Upon the commencement of any proceeding (including the written claim or written threat of such proceeding) in respect of which indemnity may be sought under clause (a) of the fourth paragraph of this §16, the Lessor shall promptly, upon its knowledge thereof, give written notice of such commencement to the Lessee. The Lessor and the Beneficiary hereby agree to use their best efforts to contest in good faith said proposed proceeding so as to minimize or avoid the liability of the Lessee to pay such indemnity.

§17. *Obligations of Guarantor.* As an inducement to the Vendor to enter into the assignment of the Security Document and as an inducement to the Lessor to enter into this Lease, the Guarantor unconditionally guarantees to the Vendor and the Lessor the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in this Lease due and to be due under this Lease or otherwise in respect of the Units under this Lease, and the due and punctual performance of all obligations of the Lessee under this Lease.

The Guarantor hereby agrees that its obligations under this §17 shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Lease or any conduct of the Lessee and/or the Lessor, which might constitute a legal or equitable discharge of a surety or guarantor and irrespective of any circumstances which might limit the recourse of the Vendor or the Lessor to the Lessee. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor of any of its rights under this §17 or under this Lease and no action by the Lessor to enforce any of its rights under this §17 or under this Lease or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor under this §17.

It is understood and agreed between the Lessor and the Lessee that any and all sums paid by the Lessee pursuant to the guaranteed obligations aforementioned in this §17 shall be thereupon deemed to have been received and paid in reduction or satisfaction, to the extent thereof, of any amount then due or payable by the Lessee to the Lessor under this Lease.

§18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10.425% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 130 South La Salle Street, Chicago, Illinois 60690 with a copy to the Beneficiary at The American Road, Dearborn, Michigan 48121, Attention of Vice President, CIR Financing;

(b) if to the Lessee, at 509 Seventeenth Street, Denver, Colorado 80217; and

(c) if to the Guarantor, at 176 East Fifth Street, St. Paul, Minnesota 55101;

or addressed to the parties at such other address as such party shall hereafter furnish to the other party in writing.

§20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be ineffective in such jurisdiction to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor, the Guarantor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor, the Guarantor and the Lessee.

§21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although this Lease is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§23. *Covenants, Representations and Warranties of Lessee and Guarantor.* The Lessee and the Guarantor covenant, represent and warrant that: (i) the Lessee and the Guarantor are corporations duly organized and validly existing in good standing under the laws of their respective jurisdictions of incorporation and each is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease and, in the case of the Guarantor, to perform its obligations under the Security Document; (ii) the Lessee and the Guarantor each have the full power, authority and legal right to enter into and perform its obligations under this Lease and, in the case of the Guarantor, to enter into and perform its obligations under the Security Document, and the execution, delivery and performance of this Lease and the Security Document have been duly authorized by all necessary corporate action on the part of the Lessee and the Guarantor, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee or the Guarantor, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law binding on the Lessee or the Guarantor or any subsidiary of either or contravene the certificate of incorporation or by-laws of the Lessee or the Guarantor or any subsidiary of either or any indenture, mortgage, contract or other agreement to which the Lessee or the Guarantor or any subsidiary of either is a party or by which any of the aforesaid is bound, or any law, governmental rule, regulation or order; (iii) neither the Lessee nor the Guarantor is a party to any agreement or instrument or subject to any charter or other corporate restriction which will materially adversely affect the financial condition, business or operations of either or the ability of either to perform its obligations under this Lease or the ability of the Guarantor to perform its obligations under the Security Document; (iv) neither the execution and delivery by the Lessee and the Guarantor of this Lease nor the execution and delivery by the Guarantor of the Security Document, nor the consummation of any of the transactions by the Lessee or the Guarantor contemplated hereby or thereby, require the

consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other federal, state or foreign governmental authority or agency, except the filing and recording of such documents with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; (v) this Lease and the Security Document constitute valid and legally binding obligations of the Guarantor enforceable against the Guarantor in accordance with their respective terms, and this Lease constitutes the valid and legally binding obligations of the Lessor enforceable against the Lessor in accordance with the terms hereof; (vi) there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of the Lessee or the Guarantor or any subsidiary of either or the ability of either to perform its obligations under this Lease or the ability of the Guarantor to perform its obligations under the Security Document; (vii) the Lessee and the Guarantor and the subsidiaries of both have filed or caused to be filed all federal and state tax returns which are required to be filed and have paid or caused to be paid all taxes shown to be due or payable on said returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) on any assessment received by the Lessee or the Guarantor or any subsidiary of either, to the extent that such taxes have become due and payable; and (viii) the financial statements contained in the Railroad Annual Report Form A of the Lessee and the Guarantor and the Securities Exchange Act of 1934 Annual Report on Form 12-K of the Guarantor for the year ended December 31, 1972 and the Securities Exchange Act of 1934 Quarterly Reports on Form 10-Q of the Guarantor for the first three quarterly periods of 1973 and the related statements of earnings, surplus and source and application of funds of the Lessee and the Guarantor for the five fiscal years ended December 31, 1972 (copies of which Forms and statements have been furnished the Lessor) correctly set forth the financial condition of the Lessee and the Guarantor as of the dates, and the results of the operations of each for the periods, covered thereby, and since December 31, 1972 there has been no material adverse change (or any development involving a prospective material adverse change) in such condition or operations and nothing has occurred which will materially adversely affect the ability of either to carry on its business and operations or to perform its obligations under this Lease or the ability of the Guarantor to perform its obligations under the Security Document.

§24. *Immunities; No Recourse.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor, or the Beneficiary or on account of any representation, undertaking or agreement of the Lessor or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and the Guarantor and by all persons claiming by, through or under the Lessee or the Guarantor.

§25. *Agreements for Benefit of Beneficiary.* All rights of the Lessor hereunder (including, but not limited to, its rights under §§5, 6, 8, 9, 16 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary and any of the Beneficiary's assigns under the Trust Agreement referred to in the first paragraph hereof.

§26. *Miscellaneous.* The Lessee will cause to be furnished to the Vendor and the Guarantor promptly after each Closing Date (as defined in the Security Document) a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on the Conditional Sale Indebtedness (as defined in the Security Document) on each Payment Date (as defined in the Security Document) and promptly after any Casualty Occurrence any such revised schedule required by Article 7 of the Security Document.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE COLORADO AND SOUTHERN RAILWAY
COMPANY,

By Frank H Coyne
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Assistant Secretary

BURLINGTON NORTHERN INC.,

By Frank H Coyne
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
~~Assistant~~ Secretary

EXCHANGE NATIONAL BANK OF CHICAGO, AS
TRUSTEE,

By [Signature]
Senior Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Assistant Secretary Trust Officer

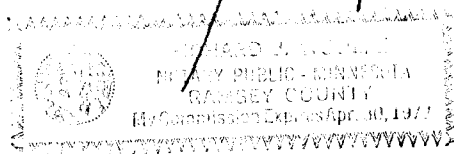
STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 21st day of February, 1974, before me personally appeared
FRANK H. COYNE, to me personally known, who, being by me duly
sworn, says that he is the Vice President of THE COLORADO AND SOUTHERN
RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument
is the corporate seal of said corporation, that said instrument was signed and
sealed on behalf of said corporation by authority of its Board of Directors,
and he acknowledged that the execution of the foregoing instrument was the
free act and deed of said corporation.

Richard J. Woulfe
Notary Public

[NOTARIAL SEAL]

My Commission expires



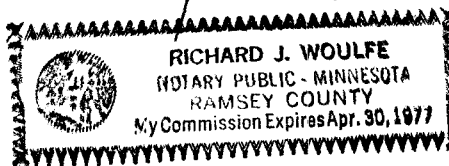
STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 21st day of February, 1974, before me personally appeared
FRANK H. COYNE, to me personally known, who,
being by me duly sworn, says that he is a Vice President of BURLINGTON
NORTHERN INC., that one of the seals affixed to the foregoing instrument is
the corporate seal of said corporation, that said instrument was signed and
sealed on behalf of said corporation by authority of its Board of Directors,
and he acknowledged that the execution of the foregoing instrument was the
free act and deed of said corporation.

Richard J. Woulfe
Notary Public

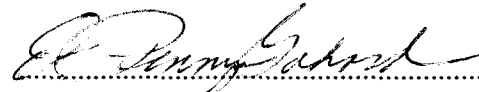
[NOTARIAL SEAL]

My Commission expires



STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 21ST day of February, 1974, before me personally appeared
HAROLD Z. NOVAK, to me personally known, who,
being by me duly sworn, says that he is a **Senior Vice President** of
EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the
foregoing instrument is the corporate seal of said bank, that said instrument
was signed and sealed on behalf of said bank by authority of its By-Laws,
and he acknowledged that the execution of the foregoing instrument was the
free act and deed of said bank.


.....
Notary Public

[NOTARIAL SEAL]

Schedule I to the Lease

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Number (Both Inclusive)</u>
General Motors Model SD-40, 3000 hp., diesel- electric locomotive.....	10	C&S918-925; C&S980; C&S996

Schedule II to the Lease

	Percentage of Purchase Price* of Units
Basic Lease Rate:	
Payments 1-10	2.5125%
Payments 11-30	6.3741%

* As defined in the Security Document.

Schedule III to the Lease

CASUALTY VALUES

Semi-annual Rental Payment Date	Percentage of Purchase Price*
1	109.85%
2	108.62
3	110.85
4	112.86
5	114.69
6	116.34
7	112.87
8	114.19
9	115.33
10	116.32
11	108.35
12	104.99
13	101.41
14	97.60
15	88.71
16	84.60
17	80.38
18	76.03
19	71.54
20	66.92
21	62.19
22	57.36
23	52.42
24	47.38
25	42.24
26	36.99
27	31.63
28	26.16
29	20.58
30 <i>(and thereafter) thru 7th</i>	15.00

* As defined in the Security Document.